

AMENDED IN SENATE MAY 25, 2004

AMENDED IN SENATE MAY 11, 2004

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1492

Introduced by Senator Dunn

February 19, 2004

An act to add Chapter 6.5 (commencing with Section 56.32) to Part 2.6 of Division 1 of the Civil Code, and to add Chapter 6.5 (commencing with Section 1112) to Part 3 of Division 2 of the Labor Code, relating to ~~employment~~ confidential information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1492, as amended, Dunn. ~~Employment:—confidential~~ Confidential information.

(1) Existing law prohibits a health care provider, health care service plan, or contractor from disclosing medical information regarding any patient of the health care provider or enrollee or subscriber of the health care service plan without first obtaining an authorization, except as specified. Existing law makes a violation of this provision, and related provisions relating to the handling of confidential medical information, subject to administrative, civil, and criminal penalties.

This bill would prohibit a health care business, as defined, from transmitting individually identifiable health information, as defined, to a site outside the United States, unless specified notice and authorization requirements are satisfied. This bill would create a state-mandated local program by imposing the above-described penalties on persons who violate this provision.

(2) Existing law ~~provides for the protection of specified types of personal information and~~, by executive order of the Governor, establishes the Office of Homeland Security.

This bill would prohibit the performance of any work involving information that is ~~private with respect to Californians or~~ essential to California's homeland security at a worksite outside of the United States, except with respect to specified transactions.

(3) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6.5 (commencing with Section 56.32)
2 is added to Part 2.6 of Division 1 of the Civil Code, to read:

3

4 CHAPTER 6.5. DISCLOSURE OF MEDICAL INFORMATION by HEALTH
5 CARE BUSINESSES

6

7 56.32. (a) For purposes of this chapter, a "health care
8 business" means any business organization, association, or
9 venture established to make a profit, or any private, nonprofit
10 organization, that collects or retains individually identifiable
11 health information about consumers in relation to medical care,
12 including but not limited to, all of the following:

13 (1) Hospitals.

14 (2) Physicians and other health care providers.

15 (3) Health maintenance organizations.

16 (4) Medical partnerships.

17 (5) Emergency medical transportation companies.

18 (6) Medical transcription companies.

19 (7) Banks that collect or process medical billing information.

20 (8) Any subcontractor or potential subcontractor of an entity
21 described in paragraphs (1) to (7), inclusive.



(b) For purposes of this chapter, “individually identifiable health information” has the same meaning as in the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).

56.33. No health care business shall transmit individually identifiable health information to a site outside the United States unless all of the following apply:

(a) The health care business discloses to the consumer that his or her individually identifiable health information may be transmitted to a site outside the United States.

(b) The health care business obtains a consent acknowledgement form from the consumer, before a consumer relationship is established, that his or her individually identifiable health information may be transmitted to a site outside the United States.

(c) The consent of the consumer has been granted or renewed on at least an annual basis.

(d) The consumer may revoke his or her consent in writing to the health care business at any time.

56.34. A health care business shall utilize a form, statement, or writing to obtain consent to transmit individually identifiable health information to a site outside the United States. The form, statement, or writing shall meet both of the following criteria:

(a) Dated and signed by the consumer.

(b) Clearly and conspicuously discloses all of the following:

(1) By signing, the consumer is consenting to the transmission of his or her individually identifiable health information to a site outside the United States.

(2) The consent of the consumer must be renewed on at least an annual basis.

(3) The consumer may revoke his or her consent at any time.

(4) The procedure by which consent may be revoked.

SEC. 2. Chapter 6.5 (commencing with Section 1112) is added to Part 3 of Division 2 of the Labor Code, to read:

CHAPTER 6.5. CONFIDENTIAL INFORMATION

~~1112. (a) The Legislature finds and declares all of the following:~~

1 ~~(1) The California Constitution and California statutes protect~~
2 ~~the privacy of Californians from unwarranted intrusions into their~~
3 ~~private and personal lives.~~

4 ~~(2) Identity theft is the fastest growing white collar crime in the~~
5 ~~country, and California has the second highest number of reports~~
6 ~~of identity theft in the entire country.~~

7 ~~(3) Increasingly, medical files, tax records, bank and financial~~
8 ~~data, X-rays, legal documents containing attorney-client~~
9 ~~privileged information, social security numbers, credit~~
10 ~~information, and other private information is being outsourced to~~
11 ~~be processed and analyzed by workers overseas.~~

12 ~~(4) Despite California's important constitutional and statutory~~
13 ~~privacy protections, these laws provide only partial protection to~~
14 ~~Californians against law breakers who violate their privacy rights~~
15 ~~in another country. While Californians can enforce privacy laws~~
16 ~~and seek damages from the person or entity in the United States to~~
17 ~~whom they have entrusted their private information, California~~
18 ~~courts have no jurisdiction in other countries, and therefore no~~
19 ~~ability to protect a Californian's records or enjoin illegal behavior~~
20 ~~occurring offshore.~~

21 ~~(5) Since September 11, 2001, there has been increased~~
22 ~~attention to safeguarding California's physical and information~~
23 ~~infrastructure: its roads, bridges, buildings, electric grid, dams,~~
24 ~~and monuments.~~

25 ~~(6) The federal Uniting and Strengthening America by~~
26 ~~Providing Appropriate Tools Required to Intercept and Obstruct~~
27 ~~Terrorism Act of 2001 (U.S.A. PATRIOT Act; P.L. 107-56)~~
28 ~~provides grants to states to secure its infrastructure from terrorist~~
29 ~~acts.~~

30 ~~(7) Information about California's physical infrastructure,~~
31 ~~which is information essential to homeland security, is being~~
32 ~~outsourced to be processed and analyzed by workers overseas.~~

33 ~~(b) It is the intent of the Legislature in enacting this chapter that~~
34 ~~work involving Californians' private information and information~~
35 ~~essential to protecting California from terrorist acts be performed~~
36 ~~within the United States.~~

37 ~~1113. — Except as provided in Section 1114.5, no work~~

38 ~~1112. (a) No work involving information that is private or~~
39 ~~essential to homeland security shall be performed at a worksite~~
40 ~~outside of the United States.~~

~~1114. For purposes of this chapter:~~

~~(a) (1) Private information includes all of the following:~~

~~(A) Any individually identifiable health information.~~

~~(B) Any personally identifiable financial information.~~

~~(C) Any confidential communication between client and lawyer.~~

~~(D) Any information obtained in the business of preparing federal or state income tax returns or assisting taxpayers in preparing those returns, including, but not limited to, any instance in which this information is obtained through an electronic medium.~~

~~(E) Any personally identifiable information, including, but not limited to, all of the following:~~

~~(i) Social security number.~~

~~(ii) Driver's license number.~~

~~(iii) Credit report.~~

~~(iv) Information provided by a consumer on an application to obtain a loan, credit card, or other service.~~

~~(2) Private information does not include publicly available information for which there is a reasonable basis to believe the information is lawfully made available to the general public from any of the following:~~

~~(A) Federal, state, or local government records.~~

~~(B) Widely distributed media.~~

~~(C) Disclosures to the general public that are required to be made by federal, state, or local law.~~

~~(b) Information~~

~~(b) Subdivision (a) shall not apply where the expertise or material necessary to perform the work is unavailable in the United States.~~

~~1113. For purposes of this chapter, information essential to homeland security means both either of the following:~~

~~(1) Information necessary to enhance the capability of state and local jurisdictions to prepare for and respond to terrorist acts, including, but not limited to, events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices.~~

~~(2) Information relating to physical and information infrastructures, including, but not limited to, telecommunications, energy, financial services, water, and transportation sectors.~~

~~(c) “Individually identifiable health information” has the same meaning as in the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).~~

~~(d) “Personally identifiable financial information” has the same meaning as in subdivision (b) of Section 4052 of the Financial Code.~~

~~(e) “Confidential communication between client and lawyer” has the same meaning as in Section 952 of the Evidence Code.~~

~~(f) “Tax return” has the same meaning as in subdivision (b) of Section 22251 of the Business and Professions Code.~~

~~1114.5. (a) Section 1113 shall not apply to private information regarding a consumer that is necessary for the conduct of either of the following:~~

~~(1) Any transaction initiated by the consumer.~~

~~(2) Any transaction the consumer opts to have performed at a worksite outside of the United States.~~

~~(b) Any exemption pursuant to subdivision (a) is limited to the immediate transaction and the information that is essential to that transaction. Each subsequent transaction must independently qualify for exemption.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.